

On November 7, 2005 appellant, then a 45-year-old information technology specialist, filed a claim alleging that he sustained a major depression, high blood pressure, sexual dysfunction and sleep abnormalities in the performance of duty. Regarding the cause of his claimed emotional condition, he stated, “I had almost daily traumatic experiences during my six

months deployment to Kuwait in support of Operation Iraqi Freedom II. I had no medical issues or symptoms of this problem prior to this event.”

In statements received by the Office on February 8, 2006, appellant asserted that he sustained an employment-related emotional condition while he was stationed in Kuwait between January 9 and July 1, 2004 in support of Operation Iraqi Freedom II.¹ He claimed that he was personally responsible for the “entirety of 7th Signal Brigade network operations throughout Kuwait, Iraq, and Afghanistan during my 12-hour duty shift.” Appellant asserted that he was not trained on the tactical aspects of the network and was not allowed to provide guidance and supervision to junior network managers regarding tasks which were within his knowledge area. He claimed that he made numerous requests for the tactical standard operating procedure of the organization but this information was not provided until April 2004. Appellant asserted that the enlisted officers became aware that he had no real authority or influence and he became “the foil for whatever jokes or harassment any of them felt like delivering my way.” He claimed that the junior officers appeared to see him as “in the way” and did not welcome him into the organization.

Appellant asserted that, during a meeting with the deputy brigade commander regarding his problems with supervisors and coworkers, it was suggested that he should physically assault a company-grade commissioned officer who had been abusive in his dealings with him. He initially thought the individual was joking but he later witnessed another soldier attempt to assault the officer he had complained about. Appellant claimed that he was assigned to quarters with an individual of a different sexual orientation and stated that this “caused me great discomfort as I was concerned about the possibility of a problem with my roommate, due to our differences in this regard.” He asserted that this situation caused him to be subjected to ridicule by his coworkers and that when he made a request to be moved, management questioned why he was such a “homophobe.” Appellant claimed that management responded in a condescending or patronizing manner to his concerns about his working and living environments.

Appellant claimed that a noncommissioned officer in charge of the rear detachment operation center directed him to access and field test a web-based calendaring system, but that a supervisor, Major Frank Gonzales, later told him that he should not have addressed this matter. He became afraid to take any actions regarding mission functions within the network operations center until the main body of the organization returned at the end of the week. Appellant claimed that he became concerned when Major Gonzales indicated that he would not be invited to a meeting for all Network Operations and Security Center (NOSC) personnel because there was not enough money to pay overtime for his presence at the meeting. He told Major Gonzales that overtime pay was not an issue for him but that Major Gonzales departed the area after he made this comment. Appellant indicated that he concluded that he was not invited to the meeting because he was not wanted there.

Appellant indicated that he was upset because Major Gonzales did not seem to know that he was off work for legitimate medical reasons and claimed that he was wrongly designated “absent without leave.” He claimed that Major Gonzales stated that he “didn’t understand how

¹ Appellant stated that his duty position during this period was brigade night watch officer.

anything that happened in Kuwait could have possibly resulted in the problems I reported.” Appellant stated that he became angry and confused after Major Gonzales indicated that he would support his departure from the organization. He asserted that on January 14, 2005 Major Gonzales became angry when he learned that appellant had spoken to coworkers about their “negative working relationship.” Appellant claimed that, during a January 14, 2005 meeting, Major Gonzales pointed to a stack of resumes and stated that his resume was not in the stack and that he was not qualified for the job he held. He alleged that Major Gonzales became angry when he learned that he had spoken to Michelle Curtis, chief of the information management office, about his detail to Kuwait. Appellant claimed that Major Gonzales stated, “What are you doing here, and how long is it going to take you to leave?”

Appellant stated that he felt his “true duty was to stay awake for 12 hours, be the butt of crude humor and disrespectful treatment by the workers under my ‘supervision’ and to take personal responsibility in the event a catastrophic event occurred anywhere within the 7th Signal Brigade’s area of responsibility during my tour of duty.” He claimed that the “fear of enemy attack, or an act-of-God failure at a network node under my official responsibility plagued me constantly.” Appellant claimed that his immediate supervisor was patronizing during discussions about his concerns and responded that his grade was equivalent to that of an Army major and that he should “take charge” of the situation. He alleged that his immediate supervisor reminded him every morning that it was not his decision to hire him and that he did not feel he was qualified for the job.

Appellant submitted a November 10, 2005 report of Dr. Francis J. Manley, an attending clinical psychologist. On February 10, 2006 the Office requested that appellant submit additional factual and medical evidence in support of his claim. Appellant submitted reports of Dr. Kathleen North-Wilhelm, an attending Board-certified family practitioner, and Margaret A. Miller, an attending Board-certified psychiatrist.

In a June 30, 2006 decision, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors. The Office found that appellant did not establish that he was subjected to harassment or discrimination or that the employing establishment committed error or abuse in carrying out its administrative functions.²

Appellant submitted additional statements which provided further details regarding the conditions which he felt caused his claimed emotional condition. He stated that on or about January 18, 2004 he was instructed to update the network diagram but did not do so because he was given inadequate instructions. Appellant claimed that Captain Bettic, a supervisor, advised Lieutenant Colonel Coles, the deputy brigade commander, and Major Gonzales, that he had not made the updates but did not tell them that he was not given proper instructions. He was

² The Office addressed a number of appellant’s assertions, including his claims that he was the foil for jokes and harassment, that he felt that he was made to feel that he was “in the way,” that he feared an enemy attack or act of God, that his immediate supervisor was patronizing, that it was suggested that he should physically assault an officer, that he was verbally threatened by a coworker, and that he was assigned to quarters with an individual of a different sexual orientation.

verbally counseled by Major Gonzales for not making the updates.³ Appellant claimed that on one occasion several technicians ignored his requests to verify the ranges of internet protocol addresses after the addresses had been changed. He asserted that the technicians found errors in the addresses after he insisted that they check them. Appellant indicated that he advised Major Gonzales that the errors in the addresses could have caused “catastrophic damage on the battlefield ... or in a civilian populated area” but that his concerns were brushed aside. He claimed that after he told his roommate that he was in a relationship with a woman that he responded, “Yes, but what about your boyfriend?” Appellant claimed that his roommate used vulgar language when asking him for help in downloading pornographic material on his personal computer. He claimed that during a therapy session Dr. Miller stated, “They are mad at you for using all of your leave.”

Appellant also submitted several reports of Dr. Manley and a request for action by the inspector general of the employing establishment.

In a September 26, 2006 decision, the Office affirmed its June 30, 2006 decision. It found that appellant did not establish any compensable employment factors. The Office addressed a number of appellant’s assertions, noting that the claimed incident regarding the verification of the internet protocol addresses.⁴ It found that appellant’s claims were either unsubstantiated or did not rise to the level of harassment.⁵

LEGAL PRECEDENT

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.⁶ On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or

³ Appellant asserted that Captain Bettic was the officer he was advised to assault and claimed that a Major Chandler attempted to assault Captain Bettic at a birthday party for Major Gonzales.

⁴ The Office made note of some of appellant’s additional statements regarding his roommate and the suggestion that he should assault an officer.

⁵ Appellant submitted additional evidence after the Office’s September 26, 2006 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

adversely affected by employment factors.⁸ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁹ However, it is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹¹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors.

The Board finds that the Office, in its June 30 and September 26, 2006 decisions, did not make adequate findings of fact regarding appellant's claimed employment factors and did not provide sufficient reasoning for concluding that he did not establish any compensable employment factors. Appellant provided detailed statements regarding the incidents and conditions which he believed caused him to develop an employment-related emotional condition, but the Office either provided very brief mentions of these claimed employment factors or failed

⁸ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁹ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁰ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹¹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Section 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons." Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it." See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

¹² *Id.* However, if a claimant does not establish any compensable employment factors, it is not necessary to not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

to discuss them altogether.¹³ For example, the Office did not make any findings of fact regarding appellant's claims that he was not trained on the tactical aspects of the computer network, that he was not allowed to provide guidance and supervision to junior network managers regarding tasks which were within his knowledge area, that a supervisor, Major Gonzales, unfairly criticized him for field testing a web-based calendaring system,¹⁴ that he was not invited to a meeting for all NOSC personnel, and that Major Gonzales unfairly questioned the legitimacy of his absences for medical reasons and had wrongly designated him absent without leave.¹⁵ The Office also did not discuss appellant's claims that Major Gonzales became angry when he learned that appellant had spoken to coworkers about their negative working relationship, that on January 14, 2005 and numerous other occasions Major Gonzales told him that he was not qualified for the job he held and encouraged him to leave,¹⁶ and that Major Gonzales became angry when he learned that he had spoken to Ms. Curtis, chief of the information management office, about his detail to Kuwait.

The Office briefly discussed a number of claimed employment factors and collectively concluded, without further discussion, that they either did not constitute harassment or discrimination¹⁷ or that the employing establishment did not commit error or abuse with respect to the administrative matter.¹⁸ Moreover, it does not appear that the Office attempted to obtain any response to appellant's allegations from the employing establishment.¹⁹ As noted,

¹³ In its June 30, 2006 decision, the Office only indicated that appellant claimed that he was the foil for jokes and harassment, that he felt that he was made to feel that he was "in the way," that he feared an enemy attack or act of God, that his immediate supervisor was patronizing, that it was suggested that he should physically assault an officer, that he was verbally threatened by a coworker, and that he was assigned to quarters with an individual of a different sexual orientation. In its September 26, 2006 decision, the Office discussed appellant's claimed incident regarding the verification of the internet protocol addresses and made note of some of his additional statements regarding his roommate and the suggestion that he should assault an officer.

¹⁴ Appellant claimed that Major Gonzales also unfairly criticized him for not making certain computer upgrades despite the fact that he was not given proper instructions for the task.

¹⁵ Appellant claimed that Major Gonzales stated that he "didn't understand how anything that happened in Kuwait could have possibly resulted in the problems I reported."

¹⁶ Appellant claimed that Major Gonzales then stated, "What are you doing here, and how long is it going to take you to leave?"

¹⁷ To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors. *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991). However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁸ The Board has generally found that administrative or personnel matters are unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act. *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993). However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁹ It would be particularly helpful to obtain a statement from Major Gonzales as many of appellant's claims pertain to this individual.

proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.²⁰

Because the Office did not make adequate factual findings and provide sufficient reasoning, appellant has not been given the opportunity to understand the precise defects of his claim and the kind of evidence which would tend to overcome it.²¹ The case will be remanded for the Office, as part of its adjudicatory function, to make detailed findings regarding appellant's allegations, in conformance with its regulations and Board precedent. After such development as it deems necessary,²² the Office should issue an appropriate decision regarding appellant's emotional condition claim.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 26, 2006 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: March 14, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

²⁰ See *supra* note 10 and accompanying text.

²¹ See *supra* note 11.

²² This development should include an attempt to obtain a response to appellant's claims from the employment establishment.